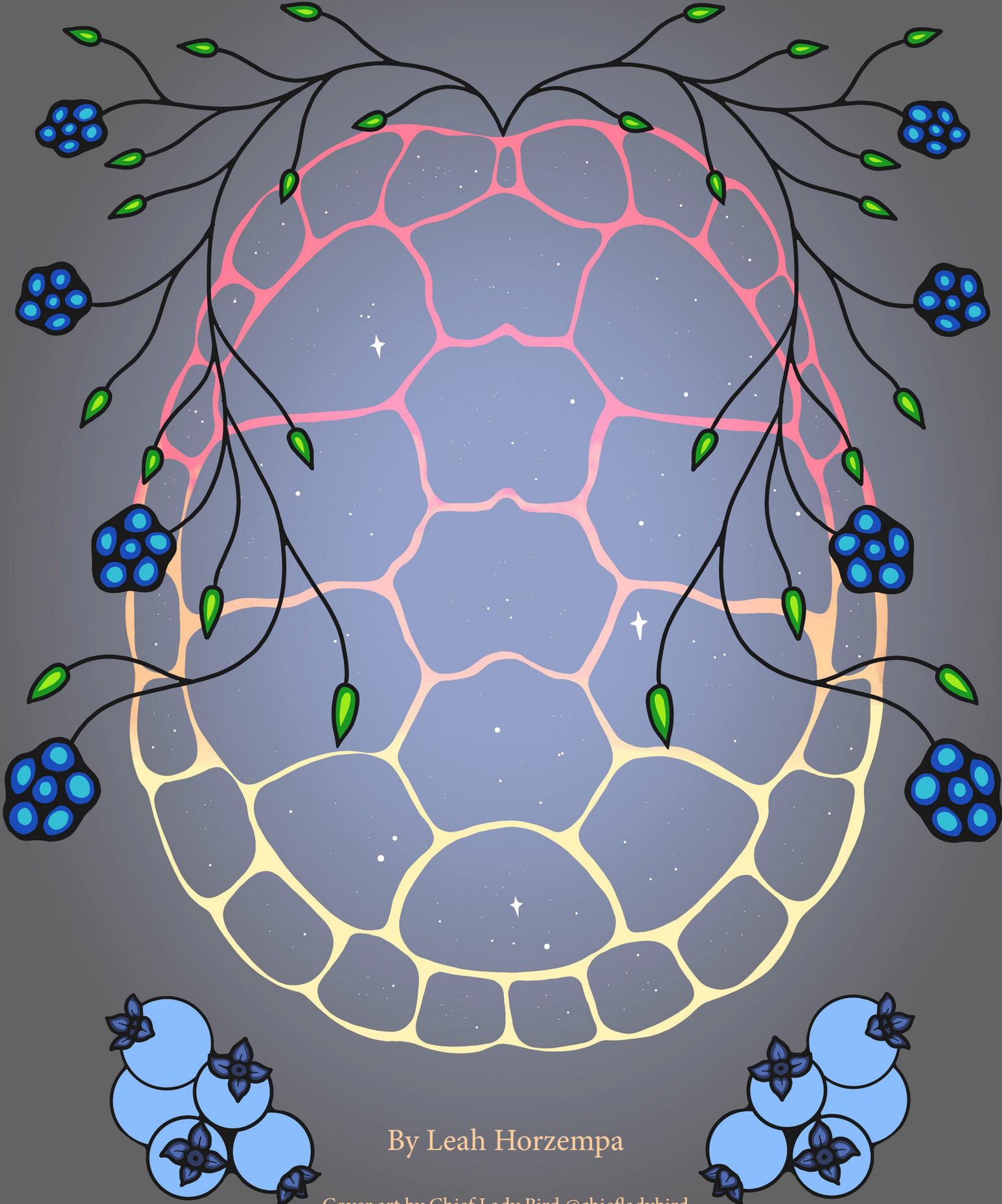


# Indigenous Knowledge & Restorative Justice

A Guide for Restorative Practitioners



By Leah Horzempa

Cover art by Chief Lady Bird @chiefladybird

**Tanshi**<sup>1</sup> I am a Métis woman from the Georgian Bay Métis community. I was raised on the traditional territory of the Wendat and the Anishinaabeg, including the Ojibwe, Odawa, and Potawatomi Nations, collectively known as the Three Fires Confederacy. Between 1818-1828, Métis families were force-migrated to the area known as Penetanguishene, now the largest Métis settlement in Ontario. I grew up in the nearby countryside with my Mother, Father, Sister, and my Métis Gramma and my Irish Poppa. I now call Tkaronto (Toronto) home, and I am grateful to be a guest on this Land.

As I write, I am finishing my post-law school articling fellowship at a restorative justice organization. I feel a strong sense of responsibility to bring the Indigenous knowledge that is foundational to restorative practices into focus. The restorative justice (RJ) industry is disempowering Indigenous justice activism through the appropriation of culture and knowledge and furthering disconnection from Indigenous Peoples and their teachings. By shedding light on this issue and elevating the voices of those it impacts, I hope to help restorative practitioners connect with the Indigenous knowledges that inform their work, so they can respectfully reconcile their relationships with Indigenous Peoples and their important knowledge.



You will notice that I use first voice and personal narrative throughout this report. Deborah McGregor<sup>2</sup> taught me this rule of Indigenous writing, as one of many important elements of knowledge governance, and a way for the reader to establish necessary context. I also intend for this to be a living document — it represents my current understanding of the conversation around restorative justice, which will evolve over time and with experience, and as the context changes.

Marsi<sup>3</sup> for reading!

**Leah Horzempa**

Sister Circle Consulting

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## TERMINOLOGY

**Indigenous** – Currently the commonly preferred term, the word Indigenous refers to the First Nations, Inuit and Métis Peoples collectively. However, many First Nations people and communities prefer to be referred to in their own language.

**Settler** – I use the term “settler” to refer to “the non-Indigenous peoples living in Canada who form the European-descended sociopolitical majority”<sup>4</sup> as used by Chelsea Vowel.<sup>5</sup> I chose this term over non-Indigenous and Canadian because I do not wish to include descendants of Black people who were kidnapped and removed from their Indigenous Lands into slavery, or those who come to this Land as refugees due to colonial violence elsewhere.<sup>6</sup>

**Traditional** – Settlers often use the term “traditional” when referring to Indigenous knowledges and practices often synonymously with “ancient”, suggesting that Indigenous Peoples lived only in the past and that our cultures and knowledges are statically confined in time. Indigenous Peoples are very much still alive, our cultures continue to evolve, and our knowledge perpetually expands. When I use the word “traditional,” I refer to the passage of knowledge from generation to generation that has occurred since time immemorial, and in this way is ‘tried, tested, and true’ as Wenona Hall describes it.<sup>7</sup> When I say “traditional” I link ideas or practices to our Ancestors and Mother Earth, to a time when Indigenous Peoples fully and freely exercised sovereignty and self-determination, in harmonious relations with our more-than-human relatives, and also to contemporary time when they continue to steward and grow the knowledge that has been passed down.

**Land** – I write Land with a capital “L” to demonstrate respect and to connote that Land has spirit and is sacred.

**Turtle Island** – Many First Nations, including the Haudenosaunee, Anishinaabeg, and other Northeastern nations, call North America Turtle Island — a name originating from their Creation stories.<sup>8</sup>

**Relatives** – When Indigenous Peoples refer to their relatives, they refer not just to their human families, but to all living things on Mother Earth. I refer to these relatives as our “more-than-human” relations, and I include the earth, rocks, wind, water, fire, and all the animals and plants, from the smallest blade of grass to the tallest tree.

**Spiritual and Sacred** – These are words that you will frequently see associated with Indigenous Peoples and cultures, but they are often misunderstood by non-Indigenous people as being associated with organized religion.<sup>9</sup> “Spirituality” is more similar in many ways to western science than it is to religion in Indigenous realities. Vowel writes that spirituality is “inherent to Indigenous epistemology, which sees everything in relation to Creation, the earth and recognizes that all life has spirit and is sacred.”<sup>10</sup> “Sacred” is an English translation for many complex terms in Indigenous languages, all of which essentially mean “important” or “meaningful.” Vowel urges that, “when you see the term sacred... do not come at the concept through the lens of your own religion – or lack of religion.”<sup>11</sup> Therefore, use of the word “secular” to describe non-Indigenous practices or ideas is also not appropriate, as it insinuates that traditional Indigenous practices are religious, when in fact they are spiritual.

# Indigenous Worldviews, Laws, and Societies

## CULTURES AND WORLDVIEWS

*“Indigenous Knowledge systems are living entities and not relics of the past.”<sup>12</sup> – Julian A. Robbins and Jonathan Dewar*

We start our justice discussion with a brief overview of Indigenous knowledge systems and worldviews, for readers who do not have experience with Indigenous Peoples. Indigenous Nations have distinct Land bases, languages, knowledge systems, cultures, traditions, and values. However, Dr. Leroy Little Bear<sup>13</sup> teaches of certain fundamental commonalities between Indigenous cultures that may be helpful to know when attempting to understand Indigenous worldviews, ways of life, and laws specifically.

Indigenous languages are verb-rich and process/action oriented. They do not make use of dichotomies such as “either/or”, or “animate/inanimate”; rather, everything exists!<sup>14</sup> According to Dr. Leroy Little Bear, “existence consists of energy” and this energy is what is known as “spirit.”<sup>15</sup> If everything exists, and everything is animate, then **“everything has spirit and knowledge,”** like humans do.<sup>16</sup> Earth is our shared Mother, and in this

way, we are all related.<sup>17</sup>

Understanding how Indigenous languages differ from European languages is imperative for being able to conceptualize our worldviews.

Indigenous theory is **“earth-based,”**<sup>18</sup> and developed through observation of the natural world over millennia. The more-than-human relatives are our teachers, and the Ancestors have passed their rich and expansive knowledge through the generations. Indigenous-peoples observed repetitive and cyclical processes of Creation, and “the idea of all things being in constant motion of flux leads to a holistic and cyclical view of the world.”<sup>19</sup>

Indigenous theory is also **“wholistic”** which, according to Kathy Absolon-King,<sup>20</sup> includes “an intermixing and consideration of time and space; the ecology of creation such as earth, sun, water and air and all their occupants; and values that retain the balance and harmony of all of the above.”<sup>21</sup> **Balance** is a central value in Indigenous cultures. According to Fyre Jean

Graveline,<sup>22</sup> “the traditional way embraces the mental, spiritual, emotional and physical aspects of the individual, the family, the community and Mother Earth as a whole.” When a person is balanced they are in a position to fulfill their responsibilities to the whole.<sup>23</sup> Another value that is central to Indigenous Peoples is “**immanence**” which, according to Graveline is the “belief in, knowledge of, and respect for unseen powers.”<sup>24</sup> These are the powers that all Mother Earth’s creatures have, and through

visions, ceremony, and dreams, they become visible.<sup>25</sup> **Interconnectedness** is another important value, and the idea that “all things are dependent on each other” is a fundamental theory of kinship.<sup>26</sup> A woman named Medicine Eagle said: “To recognize interconnectedness is to know oneself as part of a vast circle in which all expressions of life — the birds, animals, trees, insects, rocks — our brothers and sisters, all are equally beloved and vital to our Mother Earth.”<sup>27</sup>

## TRADITIONAL INDIGENOUS LAWS

Prior to European contact, the First Peoples developed and maintained “spiritual, political, and social customs and conventions to guide their relationships.”<sup>28</sup> These customs and traditions are the laws and the practical application of the theories and values of the community.<sup>29</sup> According to Leroy Little Bear:

“The philosophy, the values, and the customs in Aboriginal societies are also the law. Law is not something that is separate and unto itself. Law is the culture, and culture is the law.”<sup>30</sup>

Although there is much diversity in the laws and customs of First Nations Peoples, there are commonalities between their complex legal systems. These legal systems worked to “maintain a stable and predictable social world for Indigenous communities,”<sup>31</sup> and were both proactive and reactive, as well as flexible and adaptable to changing norms.<sup>32</sup> Indigenous laws and customs were not compartmentalized into different sections;<sup>33</sup> rather, law in communities was lived<sup>34</sup> and emphasized wholistic balance in the individual and community.<sup>35</sup>

**Kinship** is a crucial feature of Indigenous legal traditions, and shaped the behaviour of both individuals and the collective.<sup>36</sup> Kinship ties created “multidirectional legal obligations

towards everyone and everything,”<sup>37</sup> through a set of responsibilities to one’s family, clan, larger nation,<sup>38</sup> Mother Earth, the Ancestors, and the future generations. Legal enforcement was also a function of kinship, as people aspired to fulfill their kinship responsibilities,<sup>39</sup> and clan/family members would remind them of their obligations and support them in fulfilling them.<sup>40</sup> Principles of justice

and accumulated wisdom were preserved through oral tradition and conveyed through stories, ceremonies, and traditions over millennia.<sup>41,42</sup> Often, legal traditions were identified and communicated by Elders and community knowledge keepers.<sup>43</sup> Stories, and specifically Creation stories, are a central source of kinship laws.<sup>44</sup>

## Colonial Law and the Effects on Indigenous Societies

*“To be able to practice our own cultural ways and to live and express ourselves within our own worldview is important to our sense of self-worth and well-being; it is a vital part of our healing journey.” – Stó:lo Elder Amy Victor <sup>45</sup>*

Without surrender or consent, European settlers imposed a foreign legal system onto Indigenous Lands, as though established Indigenous legal systems did not already exist.<sup>46</sup> Canada’s criminal laws and justice policies overlook millennia of First Peoples traditions, and were created “within the processes of colonization and the formation of Eurocentrism.”<sup>47</sup> Canadian law has been, and continues to be, an instrument of colonialism. The *Indian Act* of 1876, which continues to govern First Nations today, is a prime example of how the

law enables and perpetuates colonial violence against Indigenous communities. According to Duncan Campbell Scott, the Deputy Superintendent of the Department of Indian Affairs from 1913-1932, the purpose of the *Indian Act* was to:

**“Get rid of the Indian problem... Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department, that is the whole object of this Bill.”<sup>48</sup>**

The Act served to eliminate the “Indian” by collapsing diverse Indigenous cultures, languages, laws, practices, and traditions into one category;<sup>49</sup> denying the “Indian” identity to First Nations women who married non-Indian men;<sup>50</sup> and removing children from their communities and forcing them into residential schools — only to strip them of their Indian status after graduation, and preventing them from living on or even attending their reserves without the permission of the white Indian agent.<sup>51</sup> In addition, the Indian Act, and the series of colonial laws and regulations that followed, empowered and legitimized the expropriation of Indigenous Lands; the destruction of ecosystems; the imposition of band council governments over Indigenous governance systems; the continued removal of children through the Sixties Scoop<sup>52</sup> and the ongoing Millennium Scoop<sup>53</sup> by child welfare agencies; the erosion of languages; the attack on Indigenous legal systems, and cultural and spiritual customs; and the prosecution and jailing of Indigenous leaders who fought to maintain traditional ways, all of which has led to the (near) destruction of kinship networks and practices.<sup>54</sup>

The impact of colonialism on Indigenous communities has been extensive, pervasive, and traumatic. The intergenerational effects continue to ripple, resulting in many community

crises.<sup>55</sup> Indigenous people are overrepresented in the Canadian prison system at shocking rates due to racist law and policy. Incarceration rates in Canada are declining overall, while rates for the First Peoples are steadily increasing.<sup>56</sup> Although they represent approximately 5% of the overall population in Canada, in 2016-17, Indigenous peoples made up 28% of federally incarcerated adults, and nearly 50% of incarcerated youth.<sup>57</sup> In Saskatchewan in the same year, 98% of incarcerated girls were Indigenous. However, it is extremely difficult for Indigenous Peoples to enact and sustain their own laws and customs in order to address this crisis.<sup>58</sup> Colonial control persists, and Indigenous Peoples “exercise very limited legislative authority under the *Indian Act*.”<sup>59</sup> Full bureaucratic oversight of Indigenous communities remains in the jurisdiction of the Canadian government,<sup>60</sup> and typically, band council governments must get federal departmental approval to pass laws.<sup>61</sup>

Despite the weakening of kinship networks, **knowledge** of Indigenous legal traditions has survived, and “continues to exist in stories, oral traditions, books, scholarship, and most importantly, in the minds and memories of community Elders and leaders.”<sup>62</sup>

Indigenous Peoples continue to respond to the externally imposed justice system and are currently making efforts to revive their own forms of justice according to Indigenous laws.<sup>63</sup> We are recognizing

justice as a fundamental part of who we are and exercising our inherent right to self-determination.<sup>64</sup>

In this time of resurgence, Indigenous People are facing the challenge of “**authenticity**,” where their contemporary legal systems are being judged, largely by state bureaucrats, by how accurately they reflect those of their Ancestors. Authenticity, however, should be measured by effectiveness in

the current context, and whether or not it is accepted by the local (determining) community.<sup>65</sup>

Indigenous culture and communities evolve and change over time, just as the colonial culture, and according to John Borrows, “the authenticity of [I]ndigenous law and governance is not measured by how closely they mirror the perceived past, but by how consistent they are with the current ideas of their communities.”<sup>66</sup>

## What is Appropriation & Why is it a Problem?

*“Not long ago, a Canadian asked if they could write stories with Indigenous characters in it if it was fiction. Of course you can, but why would you? You are taking space at the table that our writers need to earn their way as writers. Sharing space and time is the opposite of racism. Occupying another people’s space and time is racism.”<sup>67</sup> – Lee Maracle*

Niigaan Sinclair says that “appropriation is **theft** based on power and privilege.”<sup>68</sup> In Canada, the appropriation of Indigenous culture is rooted in colonization.<sup>69</sup> Along with the Land, settlers appropriated Indigenous knowledge without permission.<sup>70</sup> According to France Trépanier, “for many years or decades, centuries; people, researchers, anthropologists, ethnographers went into Aboriginal communities and took. They took the knowledge, they took the

objects, they took the ideas, they took the medicine, they took everything and then they left. We’re faced with institutions that are very powerful and that are so convinced that they are right all the time.”

Lee Maracle<sup>71</sup> writes that of theft of Indigenous Land and knowledge was rationalized in three ways: firstly, Indigenous governance structures were considered **invalid**; secondly, the oral nature of Indigenous knowledge was “**infantilized**” and subjugated by

written knowledge; and thirdly, the way that Indigenous people lived in relationship to the Land, rather than domination or ownership of it, was

considered **uncivilized**.<sup>72</sup>

Appropriation of our knowledges has had devastating effects, as Lee Maracle writes:

“Today we struggle to reclaim our knowledge, to articulate and create literary and scholarly works from it, and to end the theft through writing that characterized 120 years of prohibition, theft, and abrogation of our ancestors’ authority and ownership of knowledge.”<sup>73</sup>

In her book, *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada*, Chelsea Vowel provides a helpful overview of the typical knee-jerk reactions to avoid when thinking, and responding to concerns about, cultural appropriation, including:

- “I’m just showing my appreciation for the culture!”
- “There are much more serious issues to worry about; you must not care about those things if this is all you focus on.”
- “I don’t find this offensive/I’m part (insert claim to the culture), and I think this is okay/my friend who is (insert culture) thinks this is fine.”
- “Nothing is sacred/no one has a right to tell anyone what to do.”
- “All cultures borrow from one another.”
- “If you are wearing jeans and typing on a computer you’re appropriating Western culture.”
- “I’m an artist, and I draw inspiration from everything around me.”
- I don’t mind if you use things from my culture.”<sup>74</sup>

In addition to avoiding these ways of thinking about cultural appropriation, Vowel cautions that you may witness individuals from within the culture failing to uphold respect for their own cultural symbols or expressions, but that this does not give you permission to do so.<sup>75</sup> Also, you may find that certain individuals from outside the culture have been given legitimate access to it by the community. This does not mean that if you do what they do, you will avoid cultural appropriation.<sup>76</sup> Finally, if you are given permission to use a specific practice or teaching, this does not give you *carte blanche* access to other cultural elements without further permission.

# Restorative Justice and Appropriation

*“It is important we learn to listen. Otherwise, Canada runs the risk of simply appropriating Indigenous legal traditions and using them to recolonize by determining what supports will be offered, what programs will be engaged, and which initiatives will be deemed successful and hereby more fully pursued.” – Jeffrey Hewitt<sup>77</sup>*

Now that we understand the basics of Indigenous worldviews and legal systems, and the ways in which these were suppressed by colonialism, we can turn our minds to a critical evaluation of restorative justice practices in Canada.

**“Restorative justice”** is generally understood as an approach to conflict resolution that brings together all the people involved: those who created the harm, those who were harmed, members of the larger community, and often professionals such as lawyers or social service providers.<sup>78,79</sup> They work together, in a non-hierarchical manner, to address the harm and attempt to repair relationships through meaningful participation from all parties.<sup>80</sup> Restorative justice is informed by Indigenous knowledge, wisdom, values, spirituality and principles of justice. However, “restorative justice” has become an industry co-opted by western institutions that consistently fails to acknowledge its Indigenous origins.

When the origins *are* referenced, Indigenous knowledges and practices are routinely cast as artifacts from the past, which undermines their very real, contemporary existence and applicability. There is an “absence of a critical Indigenous voice in discourses” and related literature,<sup>81</sup> and Indigenous peoples are rarely viewed the true experts in this field.

In Canada and internationally, restorative justice has been considered an alternative to western justice practices since the 1970’s,<sup>82</sup> and its use has been steadily rising in neo-colonial jurisdictions since the 1990’s.<sup>83</sup> The “discovery” of restorative justice by activists and policymakers has led to an ideological shift in the west that focuses on rehabilitation and reintegration, rather than punishment.<sup>84</sup> Restorative justice practitioners criticize the criminal justice system for consistently neglecting the victims of crime, based on the fact that crime is considered

harm against the state rather than those who actually suffered it.<sup>85</sup>

The rise in restorative justice has been attributed to several factors, including increasing costs of the correctional system, and as a response to Indigenous justice activism and

overrepresentation in incarceration.<sup>86</sup> As a result, restorative justice is becoming a central component of western justice policy,<sup>87</sup> and a fashionable policy tool to respond to Indigenous peoples' overrepresentation.<sup>88, 89</sup>

## APPROPRIATION THROUGH INDIGENIZATION

Despite the rise of restorative justice, the Canadian government continually fails to recognize the broader applications of Indigenous justice practices for Indigenous Peoples — for example, as community rebuilding and healing from trauma.<sup>90</sup> Rather, Indigenous efforts for self-determined justice are seen as a “zero-sum game,” whereby any jurisdictional gains over their own people are considered threats to Canadian sovereignty, and are strongly resisted.<sup>91</sup>

Canada's response to Indigenous justice activism and overrepresentation in the criminal justice system over the past fifty years has had several phases.<sup>92</sup> In the 1970s, the government used “**indigenization**” strategies, which involved incorporating traditional Indigenous values and methods into existing colonial state policy.<sup>93</sup> Indigenization starts when the state (finally) acknowledges that Indigenous peoples benefit from their own traditional crime responses — approaches that were once prohibited and even outlawed in many instances.<sup>94</sup> The state then adopts these traditional

practices for its use and control, with the purpose of absorbing “indigenous approaches to social harm within the framework of a state-dominated process.”<sup>95</sup>

In the 1980's and 90's, “**accommodation**” strategies were used to flex the criminal justice system to try to accommodate Indigenous traditions.<sup>96</sup> In Canada, this involved correctional policies such as allowing Elders to visit inmates, on par with priests or rabbis, and allowing Indigenous inmates to take part in some cultural and spiritual practices such as sweat lodges.<sup>97</sup> In the late 1990's and early 2000's, “**parallel system**” strategies were used to employ Indigenous-specific versions of colonial institutions such as Indigenous-led police and court services.<sup>98</sup> Regardless of the strategy used, the outcome is always the same: the colonial government is the body to bring the strategy forward, to set the rules, eligibility criteria and program options, and to allocate the funds.<sup>99</sup> Conveniently, this gives the perception of cultural sensitivity and responsiveness to First Peoples'

needs,<sup>100</sup> despite the continued denial of cultural autonomy and rights to self-determination.

Even though the use of indigenization in Canada had been criticized as revolving around “political containment and social control,” this deeply ironic process<sup>101</sup> is the basis and mechanism for colonial state uptake of restorative justice.<sup>102</sup> Indigenization in the restorative justice industry involves a policy-focused process that Tauri calls “**legitimation.**”<sup>103</sup> Legitimation is a mechanism for the state to absorb and regulate community driven practices.<sup>104</sup> It starts when Indigenous

communities or practitioners request funding for self-led restorative or community-driven programming from state officials.<sup>105</sup> In return, the state demands “clarity and certainty” from the community as a gateway to funding.<sup>106</sup> If funding is granted, rules and directions are attached. The outcome is “**top-down managerialism,**” whereby business ethics and accounting are applied, with a (mandated) emphasis on fiscal responsibility, accountability to the state, and measurable outcomes as defined by bureaucrats.<sup>107</sup> The result is that the program’s effectiveness and applicability, as determined by the community, is no longer the focus.

## THE STANDARDIZATION OF RJ

In many neo-colonial jurisdictions such as Canada and Australia, once Indigenous knowledges have been appropriated and legitimized into restorative justice policies and state-centered practices, “**standardization**” follows. According to Tauri, the standardization of restorative justice serves several functions: **firstly**, to situate restorative models within the formal criminal justice system for ultimate control and regulation;<sup>108</sup> **secondly**, to enhance western bureaucratic efficiency for purposes of comparability and to ensure “quality” by western standards.<sup>109</sup> **Thirdly**, restorative justice standardization seeks to satisfy the “equality principle,” the theory that every person coming into contact with the legal system

should be treated the same.<sup>110</sup> According to Tauri, there are two issues with the application of this principle. Firstly, it compares the use of restorative justice in community to an “idealized” version of the criminal justice system.<sup>111</sup> In reality, the criminal justice system regularly functions with major discrepancies, such as in regional court differences, sentencing, or the fact that victims and accused persons are treated differently based on race, ethnicity, age, poverty, etc.<sup>112</sup> According to Jonathan Rudin, “actual reality” must serve as the comparison base.<sup>113</sup> Secondly, the equality principle is based on the concept of “formal equality,” the theory that if everyone is treated the same, they must then have the same

experience.<sup>114</sup> However, formal equality does not equal social justice equality, as it fails to account for individual and community specific needs.<sup>115</sup>

As you may have come to expect after reading this far, the rise of restorative justice has not improved justice outcomes for Indigenous Peoples. To the contrary, in Canada, Indigenous incarceration rates continue to rise, and standardized restorative justice actually serves to further marginalize Indigenous Peoples in many ways. The standardization of restorative practices has been heavily reliant on the United Nations' model of victim-offender reconciliation, which usually involves bringing the victim and offender together with a mediator to discuss the

crime and develop an agreement for resolution.<sup>116</sup> This **narrow definition** limits the potential of restorative practices for Indigenous Peoples, for whom justice must be place-based and community specific, otherwise further erasure of community uniqueness and collapse of Nationhood into the “pan-Indigenous” category is imminent.

In addition, the lack of Indigenous voices in the restorative justice industry has “enabled both the industry and the neo-colonial states that sponsor their activities” to expand the restorative justice industry for **profit** and **appropriate** Indigenous justice philosophies and practices to represent and use them inappropriately.<sup>117</sup>

## THE IMPACTS OF APPROPRIATED JUSTICE ON INDIGENOUS PEOPLES

The appropriation of Indigenous justice philosophies and practices by the restorative justice industry has many impacts on Indigenous Peoples. **Firstly**, the appropriation, white-washing, and redelivery of Indigenous practices by the colonial state thwarts Indigenous Peoples' abilities to self-determine the design and delivery of justice services for their own people.<sup>118</sup> Meanwhile, western legal institutions ironically purport that Indigenous Peoples have access to “culturally relevant” services, skewing the public perception of access and need.

**Secondly**, the appropriation of Indigenous justice philosophies exacerbates the disconnect between Indigenous peoples and their community knowledge, which is considered to be their cultural birthright.<sup>119</sup> According to Vowel, cultural appropriation of meaningful symbols is still the status quo.<sup>120</sup> She writes about this struggle:

“The tags that ought to belong to us, and that ought to help us find each other, are often being used by others and slapped insensitively onto images and ideas that actively demean us.”<sup>121</sup>

It can be very difficult to find authentic experts on restorative practices, as the industry and academia are largely saturated with false experts. Many of these “experts” are settlers who do not credit Indigenous Peoples for the knowledge settlers have been gifted, and typically disregard the sacred meanings and stories associated with their practices. Since I’ve been working in the restorative justice field, I have experienced first-hand how non-Indigenous accounts of Indigenous justice are routinely given more authority than those of our own people. Chelsea Vowel writes about the harm this causes for Indigenous people who have suffered a loss of culture due to colonial assimilation policies. When people who were removed by residential schools, the Sixties Scoop and the ongoing fostering out of children want to learn more and reconnect with their own culture, “they have to wade through so many inaccuracies that it can feel impossible at times to reconnect.”<sup>122</sup>

Rampant misinformation about Indigenous cultures, knowledges and practices is an impediment to Indigenous Peoples’ understanding of themselves, as well as for Canadians who wish to understand and relate to the First Peoples.<sup>123</sup> Appropriation can lead to the perpetuation of negative attitudes about Indigenous people, or to a romanticization of them; either way, it creates misunderstandings.

**Thirdly**, false expertise extends to the point where Indigenous peoples must now pay non-Indigenous instructors at colonial institutions for certification in restorative justice practices, in order to gain rights to practice their traditional ways. Lee Maracle writes:

“Today, we are buying back our knowledge. I say this only so that our youth who attend these institutions to study themselves can be aware that they need not be grateful for their education. They stole our knowledge and are now selling it back to us. I believe this to be shameless, but it seems I am one of the few. Our youth need to know the extent of the pillaging of Indigenous knowledge and they need to know that it continues.”<sup>124</sup>

**Finally**, downplaying the important role that Indigenous peoples, cultures, and values play (and have played since the point of contact) in Canadian law and social policy further isolates us from the Canadian population. In contemporary society, few settler-Canadians can articulate the role of the First Peoples in the development of Canada due to a complete erasure of Indigenous voices in publicly funded education systems.

All these effects prevent meaningful, cross-cultural, relationships for co-partnership and collaboration between Indigenous peoples and settler-Canadians, making reconciliation less of a possibility.

## CURRENT PRACTICES IN RJ: CONFERENCING

*“...the family group conference is a machine designed to provide front line jobs for well-meaning professionals and siloed organizations... on the conveyor belt, Māori are the favored commodity”<sup>125</sup>*

As a response to Māori activism and claims of state bias in the late 1970's, New Zealand (NZ) indigenized the justice system as an attempt to be more culturally sensitive, and as a way to convince the Māori to yield to colonial justice control.<sup>126</sup> Over the next two decades, NZ did little to change internal, departmental practices, and instead concentrated on co-opting Māori people, ideologies, and cultural practices within institutional frameworks.<sup>127</sup> Some of the ways Māori culture was co-opted include, a) appropriation of a Māori name, *Te Tari Taake*, (which was “affectionately translated by some Māori as “The Ministry of Take”); b) adoption of a departmental waiata (a Māori song); and, c) addition of Māori symbols to the department letterhead.<sup>128</sup>

Another highlight of NZ's indigenization process was the adoption of family group conferencing (FGC) in the *Children, Young Persons and Their Families Act, 1989*, which was internationally touted as a revolution in youth justice services. However, these changes did very little to empower the Māori, who in many instances, continued to be treated as passive subjects of an imposed system without significant authority or judicial

autonomy. From Tauri's perspective, FGC “can be considered as much an attempt to silence Māori criticisms of the imposed European justice ordering, as it can be seen as an effort to radically alter juvenile justice practices.”

Some Māori people identify with the FGC process; however, the Māori experience of FGC has been very negative overall. Many have described FGC practices as lacking cultural responsiveness and capability, given that professionals involved do not have a culturally competent lens. One Māori person comments:

*“The family group conference is about as restorative as it is culturally sensitive... in the same way Pākehā [European] social workers believe they are competent enough to work with our people... Pākehā think they're the natural ordinary community against which all other ethnicities are measured.”<sup>129</sup>*

FGC has also been experienced by Māori as a forum for removing children by importing western risk assessment tools.<sup>130</sup> The result is a practice that uses Māori knowledge and processes, but restricts how they can use it, so as to serve the state's aims.<sup>131</sup> According

to one Māori person: “family group conferencing was never a Māori process... (laughing) the Pākehā took the whānau hui,<sup>132</sup> colonized it and then cheekily sold it back to the native.”<sup>133</sup>

Unfortunately, the Māori were not the only Indigenous people that FGC was sold to. When NZ received international attention for FGC, policy makers and restorative justice practitioners exaggerated the Indigenous/Māori foundations to other jurisdictions where Indigenous Peoples

were also disproportionately incarcerated. As a result, FGC was implemented in Australia, England, and Canada. Tauri writes about the international use of FGC for Indigenous Peoples elsewhere:

**“the cross-jurisdictional transfer of the forum is experienced less as a gift, and more as the imposition of a Eurocentric, standardised crime control process that impedes the development of Indigenous-led initiatives.”<sup>134</sup>**

## CURRENT PRACTICES IN RJ: CIRCLES

*“Nothing we do, we do by ourselves; together we form a circle. That which the trees exhale, I inhale. That which I exhale, the trees inhale. We live in a world of many circles; these circles go out into the universe and constitute our identity, our kinship, our relations.”<sup>135</sup> – Fyre Jean Graveline*

The use of Circles can be traced to the traditional and contemporary teachings of Indigenous Peoples on Turtle Island<sup>136</sup> to whom the Circle is a Sacred gift from the Ancestors, and a way to achieve interconnectedness with all.<sup>137</sup> In pre-confederate times, the Sacred Circle was central to the Elders teachings<sup>138</sup> which are as diverse as the many Indigenous communities, and look different depending on the context, the teacher and the Nation.<sup>139</sup> The Circle is an

egalitarian, non-hierarchical space where each person’s voice is heard in turn.<sup>140</sup> Many communities have continued or are reclaiming Circle practices and teachings. Practically, Circles are used to bring people together for decision-making, conflict resolution, learning, and healing, among other things.<sup>141</sup> Graveline talks about the impact of the physical structure of the Circle:

**“Part of the energy of the Circle has to do with the egalitarian structure... In Circle, energy flows from speaker to speaker, creating an opportunity for a different kind of focusing and a different awareness about the relationships to self, to one another and to the whole.”<sup>142</sup>**

In Canada, Circles have been adopted into the criminal justice system. The “peacemaking circle” model was first implemented as a sentencing circle in *R v. Moses* in 1992 by Yukon court circuit judge, Justice Barry Stuart.<sup>143</sup> Sentencing circles bring the victim, the accused and members of the community together to determine the court outcomes through consensus.<sup>144</sup> Wenona Victor writes about the use of sentencing circles:

**““Sentencing circles” were a significant step at the time, but are limited insofar as they represent an accommodation strategy that incorporates some of the vestiges and symbols of Aboriginal justice — the circle, in this instance, along with some community involvement — while still retaining all effective power within the Canadian justice system.”<sup>145</sup>**

There is much support for the use of sentencing circles, including from some Indigenous people who are grateful to have a (somewhat) culturally relevant

practice available in a system that has little meaning or authority to many of us. However, the use of Circles in the criminal justice system has led to an uptake of Circle work by the restorative justice industry, which sees Circles as a tool of conflict resolution rather than as Sacred or a way of life. Many of these Circle practitioners have not developed or maintained relationships with Indigenous people. They often lack the necessary appreciation for Circle teachings and are not adequately collaborating with and involving Indigenous knowledge and wisdom keepers to ensure their practice is appropriate and respectful.

Graveline talks about appropriation of Circles (emphasis added):

**“If we are going to honour spiritual interconnectedness, a central teaching of circle work, care must be taken to do more than place ourselves in a circle formation. If our intentions are to revitalize rather than appropriate the powers of the Circle as an Ancestral form, we must invite the Ancestors and the other powers of life into our learning spaces. To do so requires insight into and a thorough understanding and implementation of ceremonial practices. Guidance of or consultation with other Traditionalists is essential prior to undertaking any circle work.”<sup>146</sup>**

## ***“Talking Circle as Methodology Is an “Adaptation”.***

*I am reminded by an Elder*

*“This is not the practice, taking notes...in a setting like this”*

*(Sarah in Graveline, 1998, p. 241).*

*Other Traditional participants want to know:*

*How are Laws of “moontime”*

*abstinence from drugs and alcohol addressed?*

*Would requiring research participants to disclose*

*Substance consumption over the last four days?*

*Women sitting outside the Circle on their Moontime?*

*Be Unusual in an academic research setting?*

*Abusive of individual rights to Privacy?*

*What about the **ingrained potential for Appropriation***

*by members of White culture, asks Charlotte?*

*“It’s very tempting to borrow wholesale from North American Earth Based Tradition because it’s much more recent. It’s much more intact...But it’s not right,” she says (Charlotte in Graveline, 1998, p. 245).*

*Using Circle in Eurocentric contexts*

*can be a negative, hurtful thing.*

*As Elder Sarah says: “I’d like the dominant society to learn from this. But I don’t want them to exploit it or to do damage to it, or make fun of it. That’s my biggest fear,” (in Graveline, 1998, p. 246)*

*Circle as Methodology has Complexities.*

*Simplicity Is an Illusion.*

*Physical forms may be easily Comprehended*

*Spiritual and other dimensions are Not.*

*Adaptations are a necessity*

***engage in them cautiously.”<sup>1</sup> – Fyre Jean Graveline***

## CASE STUDY: A STÓ:LŌ EXPERIENCE

In the late 1990's, Wenona Hall [formerly Victor]<sup>147</sup> was hired to implement a justice program for the Stó:lō Nation.<sup>148</sup> However, rather than being tasked with developing a Stó:lō specific justice program, she was asked to implement “**family group conferencing**” (FGC).<sup>149</sup> She was told that an Indigenous group called the Māori created FGC, and therefore it would serve her Indigenous community well.<sup>150</sup> When Wenona and her colleagues attended the required FGC training, they were met by a non-Indigenous trainer who taught a conflict resolution model, which to Wenona, did not appear to be very Indigenous at all!<sup>151</sup> After a little digging, Wenona uncovered that the Māori also did not recognize FGC as their own, despite it being advertised and sold in their name.<sup>152</sup> New Zealand state actors had exported FGC internationally for money, while advertising it as “Indigenous.” After learning these horrors of appropriation, the Stó:lō abandoned the FGC program.<sup>153</sup>

Searching for an authentic option, Wenona and her colleagues came upon a more homegrown program called “**peacemaking circles.**”<sup>154</sup> The next round of training was conducted by Mark Wedge and Justice Barry Stuart.<sup>155</sup> Unlike the FGC training

which took place in a hotel, Justice Barry Stuart encouraged them to find a more appropriately Indigenous space for learning, which was a step in the right direction to Wenona and a catalyst for what would come next.<sup>156</sup>

The Stó:lō ultimately decided that they did not wish to mirror the Canadian criminal justice system, nor did they want to risk their traditional ways being co-opted by the government like the Māori.<sup>157</sup> Wenona Victor wrote:

“I mean no disrespect, but we don't need the Māori, we don't need a fancy hotel to legitimize what we are learning, and no disrespect, but we don't need a judge either to “teach” us about circle. We have our own culture, our own teachers, our own Elders, our own language and learning environment.”<sup>158</sup>

Moving forward, they decided their justice strategy must be based on their own culture, customs, and traditions, it must be supported by Stó:lō communities, and be driven by the people themselves.<sup>159</sup> The result was a justice process called Qwi:qwelstóm that relied on the traditional justice of the Stó:lō People,<sup>160</sup> based on the principles of respect, teachings, consensus decision making, the interrelatedness of all, and connection to family and community.<sup>161</sup>

# Practicing Restorative Justice in a Good Way

*“In essence, practice and programming based on Indigenous theory ought to support workers to be strong and healthy in terms of clear minds, strong spirits, healthy bodies and healing hearts.”<sup>162</sup>*

If your work is based on or involves Indigenous knowledges or practices, or if you work with or for Indigenous people, it is essential to show **respect**. Vowel writes about what is appropriate: “...Not declared respect from the person wishing to access something, but rather respecting the cultural expectations of access as laid out within the culture itself.”<sup>163</sup> Particular demonstrations of respect may be called for depending on the specific Nation, clan, organization, or person you are interacting with. There is no “one size fits all” or pan-Indigenous approach to building relationships with Indigenous people! However, if you are uncertain of where to begin, here are some of the things you can do to set the groundwork for a respectful interaction:

- 1. Educate yourself about Indigenous Peoples.** Learn about the history of Turtle Island and the genocide that happened here.<sup>164</sup> Become familiar with the Land that you live on, the First Peoples who lived there before you, as well as those who continue to live there with you.
- 2. Do your research and avoid the use of culturally important symbols or terms.** To avoid appropriation, determine what elements of Indigenous culture are sacred, or restricted for use within the community, and should not be used.<sup>165</sup> Ask Indigenous people, read what Indigenous writers have to say about the issue, and actively listen to Indigenous people speak about it.
- 3. If an Indigenous person gives you guidelines or protocols, follow them.** Vowel writes that “when someone tells you “this is how you do this respectfully,” you don’t pooh-pooh the guidelines, you follow them.”<sup>166</sup> Protocols have been created to help non-Indigenous people connect with Indigenous cultures without appropriating, stealing, or being offensive.<sup>167</sup> Protocols exist to help you — follow them! According to Sara Roque:

“It is critical in the process to address protocols and why it’s critical is because we have endured so much appropriation and with that appropriation and

misrepresentation over the years and particularly through the arts and cultural institutions. Ultimately, for one not to engage in that process, the worst case scenario is you're actively contributing to the degradation of a people and of cultures of this land."<sup>168</sup>

4. **Do not speak for Indigenous people.** Being an ally may require you to risk your voice to elevate others. In many instances however, it means giving Indigenous peoples the space to speak for themselves.
5. **Identify yourself in your practice.** You may notice that Indigenous people will often identify themselves by their name, their clan or Nation, and the Land where they are from. If you are a settler or a newcomer to Canada, you should also introduce yourself to Indigenous people in this way. Kathy Absolon explains the importance of this:

“Identifying who we are is the first protocol we do before we begin any ceremony, speak or act... We speak from our location and announce who we are, where we come from and what our intentions are. In doing so, we are also announcing who we are not and where we do not speak from. Accountability and ethics of oral tradition is thus established and the people now have the power and choice to receive your words or actions.”<sup>169</sup>
6. **Acknowledge the Land.** Be aware of whose traditional Land you are on, and what treaties exist on that territory. Always take time to recognize and be conscious of your interactions with the Land, and all its inhabitants. Consult with local Indigenous peoples and communities about how best to do this. If doing a formal Land Acknowledgment, personally learn about the Nations who have lived on the Land before you (and how to properly pronounce their names)!
7. **Acknowledge the knowledge.** Make sure that whenever you rely on Indigenous knowledges or practices you honestly reference the person/book/video where you learned it, and with what permission you share it now. If you are unsure where something is from and whether you have permission to use it in the way you want to, do not use it.
8. **Create relationships with Indigenous people.** Co-partner and co-develop your work with Indigenous people. Better yet, hire Indigenous people when creating initiatives that are about or for them, and make sure you adequately compensate them for their knowledge and time.<sup>170</sup>
9. **Be empathetic.** When encountering Indigenous peoples and perspectives, always remain cognizant and connected to the powers and legacies of colonization.

Appropriation can trigger feelings of anger and distrust in those whose culture is being appropriated, so it is important to be gracious and kind.

**10. Apologize when you make mistakes.** If you are confronted with an accusation that you have committed appropriation, take time to reflect on and acknowledge your missteps before defending your actions. Be careful not to make your acknowledgment or apology contingent on how friendly the person is when they inform you that your actions have been problematic.<sup>171</sup>

Wanting to participate in Indigenous justice initiatives or to celebrate traditional Indigenous ways of conflict resolution are worthy endeavors. However, if you fail to do these things respectfully, you contribute to the continued suppression and colonization of Indigenous Peoples, Lands and knowledges.

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<sup>1</sup> *Tanshi* is Michif for hello. Michif is a Métis language that has many place-based dialects. You may see this spelled and/or pronounced in different ways depending on where the traditional language speaker is based.

<sup>2</sup> I had the good fortune of being taught about *Indigenous Perspectives and Realities* by Dr. Deborah McGregor at Osgoode Hall Law School. Deborah is an Anishinaabe qwe from Whitefish River First Nation, Birch Island, Ontario, and a scholar at Osgoode Hall Law School and York University's Faculty of Environmental Studies. She also holds a Canada Research Chair in Indigenous Environmental Justice, and her research focuses on Indigenous knowledge systems and their various applications in diverse contexts including water and environmental governance, environmental justice, forest policy and management, and sustainable development.

<sup>3</sup> *Marsi* is Michif for thank you; note that here are many spellings for this word across dialects.

<sup>4</sup> Chelsea Vowel, *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada* (Winnipeg: Highwater Press, 2017) at 15.

<sup>5</sup> "Chelsea Vowel is Métis from manitow-sâkajikan (Lac Ste. Anne), Alberta, currently residing in amiskwacîwâskahikan (Edmonton). Chelsea is a public intellectual, writer, speaker, and educator whose work intersects language, gender, Métis self-determination, and resurgence" (Vowel *supra* note 5 at inside back cover.)

<sup>6</sup> *Ibid* at 17.

<sup>7</sup> Wenona Hall, in written conversation, October 24, 2019.

<sup>8</sup> Montreal Urban Aboriginal Community Strategy NETWORK, "Indigenous Ally Toolkit" (2019) retrieved online at <http://reseaumtlnetwork.com/resources/> at 5.

<sup>9</sup> Vowel *supra* note 4 at 85.

<sup>10</sup> *Ibid* at 78.

<sup>11</sup> *Ibid* at 85.

<sup>12</sup> Julian A. Robbins and Jonathan Dewar, "Traditional Indigenous Approaches to Healing and the modern welfare of Traditional Knowledge, Spirituality and Lands: A critical reflection on practices and policies taken from the Canadian Indigenous Example" (2011) *The International Indigenous Policy Journal* 2(4) at 1.

<sup>13</sup> Leroy Little Bear is a Blackfoot scientist, professor emeritus, and distinguished scholar. According to his bio on the Alberta Order of Excellence website, "Leroy's story begins on the Blood Indian Reserve in Southern Alberta. Growing up as one of seven siblings, his childhood was spent working on farms and participating in local cultural activities, such as Sun Dances and Pow Wows." - retrieved from <https://www.lieutenantgovernor.ab.ca/aoe/education/leroy-little-bear/index.html>.

<sup>14</sup> Leroy Little Bear, "Jagged Worldviews Colliding" in Marie Battiste, ed, *Reclaiming Indigenous Voice and Vision* (University of British Columbia, 2000) 77-85 at 78.

<sup>15</sup> *Ibid* at 78.

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Kathy Absolon, "Indigenous Wholistic Theory: A Knowledge Set for Practice" (2010) 5:2 *First Peoples Child & Family Review* at 74.

<sup>19</sup> Leroy Little Bear *supra* note 14 at 78.

<sup>20</sup> Kathy Absolon is "Anishinaabekwe from Flying Post First Nation. [Her] academic journey has been a pathway of unlearning, healing, re-learning and finding who [they are] as an Indigenous woman & what [her] place is in the academy. [Her] Anishinaabe name is Minogiizhigo kwe which translates to mean Shining Day Woman, the one who brings goodness & beauty to the day." - Wilfrid Laurier University website retrieved on October 14, 2019 from <https://www.wlu.ca/academics/faculties/faculty-of-social-work/faculty-profiles/kathy-absolon-king/index.html>.

<sup>21</sup> Leroy Little Bear *supra* note 14 at 75.

<sup>22</sup> Fyre Jean Graveline is a "Metis feminist, anti-racist activist and scholar. Born and raised in Northern Manitoba bush country, she has lived and worked from coast to coast in Canada." — Fyre Jean Graveline, *Circle Works: Transforming Eurocentric Consciousness* (Halifax: Fernwood Publishing: 1998) at the inside back cover.

<sup>23</sup> Leroy Little Bear *supra* note 12 at 79.

<sup>24</sup> Fyre Jean Graveline, *Circle Works: Transforming Eurocentric Consciousness* (Halifax: Fernwood Publishing: 1998) at 52.

<sup>25</sup> *Ibid.*

<sup>26</sup> Leroy Little Bear *supra* note 14 at 79.

<sup>27</sup> Medicine Eagle (1991) as cited in Graveline (1998) *supra* note 24 at 56.

<sup>28</sup> *Ibid* at pg. 632.

<sup>29</sup> Leroy Little Bear *supra* note 14 at 79.

<sup>30</sup> *Ibid* at 83.

<sup>31</sup> Larry Chartrand and Kanatase Horn "A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada" (2016) (prepared for the Department of Justice Canada) at 6.

<sup>32</sup> Larry Chartrand, "Indigenizing the Legal Academy from a Decolonizing Perspective" (2015), Ottawa Faculty of Law Working Paper.

<sup>33</sup> *Ibid.*

<sup>34</sup> John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) as cited in Chartrand and Horn *supra* note 31 at 7.

<sup>35</sup> Chartrand (2015) *supra* note 32.

<sup>36</sup> John Borrows as cited in *supra* note 34.

<sup>37</sup> *Ibid* at 12.

<sup>38</sup> *Ibid* at 7.

<sup>39</sup> John Borrows (2010) *supra* note 36; Larry Chartrand, "Eagle Soaring on the Emergent Winds of Indigenous Legal Authority" (2013) *Review of Constitutional Studies* 18 (1): 49-87; and, Val Napoleon and Hadley Friedland "Indigenous Legal Traditions: Roots to Renaissance" (2014) In *The Oxford Handbook of Criminal Law*, edited by Markus D. Dubber and Tatjana Hörnle. Oxford: Oxford University Press, as cited in Chartrand and Horn *supra* note 31 at 7.

<sup>40</sup> Chartrand and Horn (2016) *supra* note 31 at 7.

<sup>41</sup> John Borrows, "Indigenous Legal Traditions in Canada" (2005), *Washington University Journal of Law & Policy* 19:13 at 191.

<sup>42</sup> John Borrows "With or Without You: First Nations Law (in Canada)" (1996) *McGill Law Journal* 41, 629-665 at 646.

<sup>43</sup> *Ibid* at 191.

<sup>44</sup> Chartrand and Horn (2016) *supra* note 31 at 7.

<sup>45</sup> Amy Victor as cited in Ted Palys and Wenona Victor "'Getting to a Better Place': Qwi:qwelstóm, Stó:lo, and Self-Determination" [chapter] Law Commission of Canada, *Indigenous Legal Traditions*, UBC Press, Vancouver, BC, (2007) 12-39 at 12.

<sup>46</sup> Jeffery G. Hewitt, "Indigenous Restorative Justice: Approaches, Meaning & Possibility" (2016) *University of New Brunswick Law Journal* 67, 313-335 at 324; Jackson, M (1988) Maori and the Criminal

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Justice System. Wellington: Department of Justice; Toki, V (2018) *Indigenous Courts, Self-Determination and Criminal Justice* (London: Routledge)

<sup>47</sup> George Radwanski and Julia Luttrell “Will of a Nation: Awakening the Canadian Spirit” (Toronto: Stoddard) as cited in Shannon Moore, “Restorative Justice: Towards a Rights-Based Approach” 5, Chapter 8 in Howe & Covell, *A Question of Commitment Children’s Rights in Canada*, (Waterloo: Wilfrid Laurier University Press, 2007) retrieved online at [http://www.landonpearson.ca/uploads/6/0/1/4/6014680/chapter\\_8\\_moore\\_in\\_howe\\_covell.pdf](http://www.landonpearson.ca/uploads/6/0/1/4/6014680/chapter_8_moore_in_howe_covell.pdf) on June 5, 2019, 244-287 at 246.

<sup>48</sup> Department of Indian Affairs and Northern Development, *The Historical Development of the Indian Act*, 2 ed, by J Leslie (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Historical Research Branch, 1978) at 114.

<sup>49</sup> Hewitt *supra note* 46 at 325.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid* at 325-326.

<sup>52</sup> *The Sixties Scoop*: “The adoption of Aboriginal children in Canada between the years of 1960 and the mid-1980s was first coined the “Sixties Scoop” in a report written by Patrick Johnston (1983) published as *Aboriginal Children and the Child Welfare System* by the federal department of Social Policy Development...At that point in time, Aboriginal children were apprehended in disproportionate numbers throughout Canada and adopted primarily into non-Aboriginal homes in Canada, the United States, and overseas. Approximately 70% of those children were adopted into non-Aboriginal homes (Fanshel, 1972, York, 1992; Timpson, 1995; Fournier & Crey, 1997). By the 1970s, one in three Aboriginal children were separated from their families by adoption or fostering (Fournier & Crey, 1997)” – Raven Sinclair, “Identity lost and found: Lessons from the sixties scoop” (2007) *First Peoples Child & Family Review* 3:1, 65-82 at 66.

<sup>53</sup> *The Millennium Scoop*: “Sadly, the involvement of the child welfare system is no less prolific in the current era. Dr. Lauri Gilchrist of Lakehead University noted that given current child welfare statistics, the “Sixties Scoop” has merely evolved into the “Millenium Scoop” and Aboriginal social workers, recruited into the ranks of social services and operating under the umbrella of Indian Child and Family services, are now the ones doing the “scooping”” – Raven Sinclair, “Identity lost and found: Lessons from the sixties scoop” (2007) *First Peoples Child & Family Review* 3:1, 65-82 at 67.

<sup>54</sup> Chartrand and Horn (2016) *supra note* 31 at 12.

<sup>55</sup> Hewitt *supra note* 46 at 326.

<sup>56</sup> Lenard Monkman, “Indigenous incarceration rates: Why are Canada's numbers so high and what can be done about it?” (2018), (video), CBC news, retrieved on September 15, 2019 from <https://www.cbc.ca/news/indigenous/indigenous-incarceration-justice-system-panel-1.4729192> on May 31, 2019.

<sup>57</sup> *Ibid.*

<sup>58</sup> Chartrand and Horn (2016) *supra note* 31 at 13.

<sup>59</sup> *Ibid* at 12-13.

<sup>60</sup> *Ibid* at 13.

<sup>61</sup> Borrows (2010) as cited in *supra note* 31.

<sup>62</sup> Chartrand and Horn *supra note* 31 at 12.

<sup>63</sup> Palys and Victor *supra note* 45 at 13.

<sup>64</sup> *Ibid.*

<sup>65</sup> Borrows (2010) as cited in Chartrand and Horn (2016) *supra note* 31 at 13.

<sup>66</sup> Borrows (2005) *supra note* 41 at 200.

<sup>67</sup> Lee Maracle, *My Conversations with Canadians* (Toronto: BookThug, 2017) at 101.

<sup>68</sup> Niigaan Sinclair as quoted in “Three Indigenous Writers Discuss Cultural Appropriation with CBC’s Rosanna Deerchild” [news article] May 19, 2017, retrieved on August 1, 2020 from <https://www.cbc.ca/news/indigenous/cultural-appropriation-prize-1.4118940>.

<sup>69</sup> *Ibid.*

<sup>70</sup> Maracle *supra note* 67 at 101.

<sup>71</sup> “Lee Maracle is a [Stó:lō] nation, grandmother of four, mother of four who was born in North Vancouver, BC. ... Maracle is a both an award-winning author and teacher. She currently is Mentor for<sup>24</sup>

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Aboriginal Students at University of Toronto where she also is a teacher and also the Traditional Cultural Director for the Indigenous Theatre School, where she is a part-time cultural instructor.” – biography retrieved from <https://indigenoustudies.utoronto.ca/person/lee-maracle/>

<sup>72</sup> Maracle *supra* note 67 at 102.

<sup>73</sup> *Ibid* at 106.

<sup>74</sup> Vowel *supra* note 4 at 81.

<sup>75</sup> *Ibid* at 88.

<sup>76</sup> *Ibid* at 87.

<sup>77</sup> Hewitt *supra* note 46 at 334.

<sup>78</sup> Angela Cameron, “Restorative Justice: A Literature Review” (2005) *Literature Review*, Vancouver: The British Columbia Institute Against Family Violence as cited in Chartrand & Horn (2016) *supra* note 31 at 4.

<sup>79</sup> David Milward, “Making the Circle Stronger: An Effort to Buttress Aboriginal use of Restorative Justice in Canada Against Recent Criticisms” (2008) *International Journal of Punishment* 4(3): 124-158 as cited in Chartrand & Horn (2016) *supra* note 31 at 4.

<sup>80</sup> Barbara Tomporowski, Manon Buck, Catherine Borgen, and Valerie Binder “Reflections on the Past, Present, and Future of Restorative Justice in Canada” (2011) *Alberta Law Review* 48:4, 815-829 at 816.

<sup>81</sup> Juan Marcellus Tauri “Conferencing, Indigenisation and Orientalism: A Critical Commentary on Recent State Responses to Indigenous Offending” (2004) conference paper for the Qwi:Qwelstom Gathering “Bringing Justice back to the People”, Mission, B.C. 22-24 March at 2.

<sup>82</sup> Chartrand and Horn (2016) *supra* note 31 at 4.

<sup>83</sup> Vernon Jantzi, “Restorative Justice in New Zealand: Current Practice, Future Possibilities” (2001), Harrisonburg, Eastern Mennonite University as cited in Juan Marcellus Tauri, “An Indigenous Perspective on the Standardisation of Restorative Justice in New Zealand and Canada” (2009), *Indigenous Policy Journal*, XX:3, 1-24 at 2.

<sup>84</sup> Tauri (2009) *supra* note 83 at 2.

<sup>85</sup> Hewitt *supra* note 46 at 327.

<sup>86</sup> Tauri (2009) *supra* note 83 at 2.

<sup>87</sup> John Braithwaite, “Restorative Justice and a Better Future” (1996) *The Dalhousie Review*, 76:1, 9-32 as cited in *ibid*.

<sup>88</sup> Tauri (2009) *supra* note 83 at 4.

<sup>89</sup> Juan Marcellus Tauri, “Family Group Conferences: A Case Study of the Indigenisation of New Zealand’s Justice System” (1998) *Current Issues in Criminal Justice*, 10:2, 153-167.

<sup>90</sup> Palys and Victor *supra* note 45 at 13.

<sup>91</sup> *Ibid*.

<sup>92</sup> *Ibid* at 14.

<sup>93</sup> Tauri (2009) *supra* note 83.

<sup>94</sup> Tauri (2009) *supra* note 83 at 5.

<sup>95</sup> *Ibid*; see also: Havemann, P (1988) *The Indigenisation of Social Control in Canada*, in B. Morse and G. Woodman (eds), *Indigenous Law and the State*. Dordrecht: Foris Publications, pp. 71-100.

<sup>96</sup> Ted Palys, Richelle Isaak, & Jana Nuszdorfer, “Taking Indigenous Justice Seriously: Fostering a Mutually Respectful Coexistence of Aboriginal and Canadian Justice” (2012) (article) retrieved online at <https://www.sfu.ca/~palys/PalysEtAl-2012-Aboriginal&CanadianJustice-final.pdf> at 2.

<sup>97</sup> Tauri (1998) *supra* note 89 at 176.

<sup>98</sup> Ted Palys, “Considerations for Achieving “Aboriginal Justice” in Canada” (1993), paper presented at the annual meetings of the Western Associations of Sociology and Anthropology, Vancouver, B.C. at 5.

<sup>99</sup> Palys and Victor *supra* note 63 at 14.

<sup>100</sup> Tauri (2009) *supra* note 83 at 4; Tauri (2004) *supra* note 81.

<sup>101</sup> Tauri (2009) *supra* note 83 at 2; Tauri (1998) *supra* note 89 at 176.

<sup>102</sup> Tauri (2009) *supra* note 83 at 5.

<sup>103</sup> *Ibid* at 6.

<sup>104</sup> *Ibid*.

<sup>105</sup> *Ibid*.

<sup>106</sup> *Ibid*.

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- <sup>107</sup> *Ibid.*
- <sup>108</sup> Tauri (2009) *supra* note 83 at 9.
- <sup>109</sup> *Ibid.*
- <sup>110</sup> *Ibid* at 8.
- <sup>111</sup> *Ibid* at 9.
- <sup>112</sup> *Ibid* at 10.
- <sup>113</sup> Jonathan Rudin “Pushing Back — A Response to the Drive for the Standardisation of Restorative Justice Programmes in Canada” (2003) paper presented to The 6th International Conference on Restorative Justice, 2 October 2004, Vancouver: Simon Fraser University as cited in Tauri (2009) *supra* note 83 at 9.
- <sup>114</sup> Tauri (2009) *supra* note 83 at 10.
- <sup>115</sup> *Ibid* at 9-10.
- <sup>116</sup> Chartrand and Horn (2016) *supra* note 31 at 4.
- <sup>117</sup> Tauri (2004) *supra* note 81 at 2.
- <sup>118</sup> Tauri (2009) *supra* note 83 at 12.
- <sup>119</sup> Maracle *supra* note 67 at 112-113.
- <sup>120</sup> Vowel *supra* note 4 at 86.
- <sup>121</sup> *Ibid* at 88.
- <sup>122</sup> *Ibid.*
- <sup>123</sup> *Ibid.*
- <sup>124</sup> Maracle *supra* note 67 at 110.
- <sup>125</sup> Participant quote from Paora Moyle, “From Family Group Conferencing to Whānau ora: Māori Social Workers Talk about their Experiences” (unpublished Master’s thesis) Massey University, Palmerston North, New Zealand, as cited in Paora Moyle and Juan Marcellus Tauri, “Māori, Family Group Conferencing and the Mystifications of Restorative Justice” (2016) *Victims and Offenders* 00:1-20 at 12.
- <sup>126</sup> Tauri (1998) *supra* note 89 at 171.
- <sup>127</sup> *Ibid* at 171.
- <sup>128</sup> *Ibid* at 172.
- <sup>129</sup> Participant quote from Paora Moyle, “From Family Group Conferencing to Whānau ora: Māori Social Workers Talk about their Experiences” (unpublished master’s thesis) Massey University, Palmerston North, New Zealand, as cited in Moyle and Tauri (2016) at 9.
- <sup>130</sup> Moyle and Tauri *supra* note 124 at 8.
- <sup>131</sup> Tauri (1998) *supra* note 89 at 178.
- <sup>132</sup> “Whānau hui” is a concept that seems comparable to that of “kinship” for First Peoples on Turtle Island. According to Tauri, “whānau” can be translated to “extended family” in english. (Moyle and Tauri *supra* note 124 at 16.)
- <sup>133</sup> Participant quote from Moyle, P. “From Family Group Conferencing to Whānau ora: Māori Social Workers Talk about their Experiences” (unpublished Master’s thesis) Massey University, Palmerston North, New Zealand, as cited in Moyle and Tauri *supra* note 124 at 11.
- <sup>134</sup> Tauri (2014) *supra* note 136 at 9.
- <sup>135</sup> Graveline (1998) *supra* note 24 at 56.
- <sup>136</sup> Absolon *supra* note 18 at 77.
- <sup>137</sup> Graveline (1998) *supra* note 24 at 56.; Don Coyhis, “How to Conduct Talking Circles” [YouTube video] (2012) accessed on October 13, 2018, retrieved from <https://www.youtube.com/watch?v=3RdIX7UM4ks>.
- <sup>138</sup> Graveline (1998) *supra* note 24 at 131.
- <sup>139</sup> Absolon *supra* note 18 at 77.
- <sup>140</sup> Fyre Jean Graveline “Circle as methodology: enacting an Aboriginal paradigm” (2000) *Qualitative Studies in Education* 13:4, 361-370 at 364.
- <sup>141</sup> Graveline (1998) *supra* note 24 at 131.
- <sup>142</sup> *Ibid.*
- <sup>143</sup> Palys, Isaak, Nuszdorfer (2012) *supra* note 96 at 2.
- <sup>144</sup> Palys and Victor *supra* note 45 at 17.
- <sup>145</sup> *Ibid.*

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<sup>146</sup> Graveline (2000) *supra note* 144 at 365.

<sup>147</sup> Wenona Victor is a member of Stó:lō Nation, and has a “PhD in criminal justice and First Nations studies from Simon Fraser University and is currently assistant professor of criminal justice and history at the University of the Fraser Valley. Her scholarship focuses on restorative justice and on cultural and community revitalization among First Nations peoples.” This bio was located in this more recent publication: Keith James and Wenona Victor (2017) Stó:lō Community Entrepreneurship and Economics: Rebuilding the Circle. *American Indian Culture and Research Journal*: 2017, Vol. 41, No. 1, pp. 19-32.

<sup>148</sup> Palys and Victor *supra note* 45 at 16.

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid* at 17.

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid* at 18.

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> “Qwi:qwelstóm reflects a “way of life” that incorporates balance and harmony — a way of helping one another to survive and to care and share amongst all people; a form of justice that focuses on relationships and the interconnectedness of all living life. Qwi:qwelstóm Justice Workers and Qwi:qwelstóm Wellness Workers now work with people involved in the criminal justice system and/or people who need support with their journey towards a balance of emotional, spiritual, physical, and mental wellbeing;” retrieved on October 19, 2019 from <http://www.stolonation.bc.ca/justice>.

<sup>161</sup> Stó:lō Service Agency, “Qwi:qwelstóm Justice Program” (webpage) retrieved on June 6, 2019 from <http://www.stolonation.bc.ca/justice>.

<sup>162</sup> Robbins and Dewar *supra note* 12 at 85.

<sup>163</sup> Vowel *supra note* 4 at 86.

<sup>164</sup> According to Gord Hill, before European contact, there were an estimated 70 - 100 million First Peoples on North America prior to European contact. (Gord Hill, *500 Years of Indigenous Resistance*, (Oakland, CA: PM Press, 2009) at 6.)

<sup>165</sup> Vowel *supra note* 4 at 84.

<sup>166</sup> *Ibid* at 86.

<sup>167</sup> Maracle *supra note* 67 at 116.

<sup>168</sup> Ontario Arts Council, Indigenous Arts Protocols [video transcript], retrieved on July 10, 2020 at <https://www.youtube.com/watch?v=c6VuHji600Q>.

<sup>169</sup> Absolon *supra note* 18 at 79.

<sup>170</sup> Montreal Urban Aboriginal Community Strategy NETWORK *supra note* 8 at 7.

<sup>171</sup> Vowel *supra note* 4 at 89.